

SERVICE DATE – LATE RELEASE JUNE 16, 2008

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE

STB Docket No. AB-103 (Sub-No. 21X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—ABANDONMENT  
EXEMPTION—LINE IN WARREN COUNTY, MS

Decided: June 16, 2008

BACKGROUND

By decision served February 22, 2008 (February 2008 Decision), the Board set the terms and conditions under 49 U.S.C. 10904(f)(1) for Raymond B. English (English) and James Riffin (Riffin) (collectively, Offerors) to jointly purchase 1.9 miles of rail line (the Segment) and for Riffin individually to purchase the remaining 2.35 miles of the line (the Remainder) from The Kansas City Southern Railway Company (KCSR).<sup>1</sup> In the February 2008 Decision, the Board set May 22, 2008, as the deadline for closing the sale under the Board's offer of financial assistance (OFA) procedures.

On May 20, 2008, English filed a "Withdrawal of Offer to Purchase" (Withdrawal). In the Withdrawal, English states that he is withdrawing his offer for several reasons, most significantly because Foam Packaging has found alternative rail spurs by which it will be receiving its raw material.

In a decision served May 21, 2008 (May 2008 Decision), Chairman Nottingham imposed a housekeeping stay on closing the transaction under the Board's OFA procedures until further order and invited the parties to file pleadings addressing the effect of English's Withdrawal. Riffin and KCSR filed timely initial statements and KCSR also filed a timely reply statement. On June 6, 2008, Riffin late-filed a reply statement, which we will not accept.<sup>2</sup> English has not filed any pleadings with the Board since the May 20 Withdrawal.

---

<sup>1</sup> The Segment extends from milepost 225.6 to milepost 227.5, and the Remainder extends from milepost 227.5 to 229.85, totaling 4.25 miles of rail line located in Vicksburg, MS. The Segment and the Remainder account for the entire line for which KCSR sought abandonment authority in this proceeding. English is the president of Foam Packaging, Inc. (Foam Packaging), the only active shipper on the line.

<sup>2</sup> Rather than addressing the implications of English's withdrawal, Riffin's late-filed reply constitutes, in essence, a settlement proposal directed at KCSR and a request that the Board address matters beyond the purview of this case.

KCSR argues that, because English's withdrawal is a breach of an agreement and a statutory obligation to purchase the Segment, the Board should immediately lift the housekeeping stay and order all parties to close on the transaction under the OFA process by June 13, 2008. If the Offerors do not close on the sale by that date, KCSR requests that the Board grant KCSR immediate reinstatement of its abandonment authority and issue a notice of interim trail use (NITU)<sup>3</sup> before the end of June 2008.

In his initial statement, Riffin argues that the Board has three options available to it to resolve the issue of English's Withdrawal: (1) permit Riffin to file a motion to withdraw his offer in its entirety; (2) order English and Riffin to go forward with the purchase; or (3) permit Riffin to make an offer to purchase the entire line individually. Although his pleading then argues a case for each option, ultimately, Riffin states that his preference is that he be permitted to withdraw his offer. Riffin states that moving forward without English is a complication that he had not anticipated, and that it would consume resources and capital that Riffin had earmarked for other purposes.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 722(c), the Board may reopen a proceeding and change a prior action based on substantially changed circumstances. Here, because it now appears that continued rail service over the Segment is no longer needed,<sup>4</sup> English has demonstrated changed circumstances that, under the facts of this case, persuade us that compelling him to purchase the Segment with Riffin would not advance the policies of the OFA program.

Nor will we direct or permit Riffin to go forward by himself and purchase the Segment, the Remainder, or both. English's participation was integral to the sale of the Segment that the Board authorized, and thus any sale of the Segment to Riffin alone would be materially different from the terms and conditions the Board set in its February 2008 decision.<sup>5</sup> And, as was stated in the February 2008 Decision, without the sale of the Segment, it would be inconsistent with the purpose of section 10904 to order the sale of the Remainder, as that would result in the Remainder being isolated and severed from the national rail system. Moreover, Riffin did not

---

<sup>3</sup> On September 26, 2007, the City of Vicksburg (City) filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29, and KCSR has stated that it is willing to negotiate with the City. In its December 12, 2007 decision (December 12 Decision), the Board exempted KCSR from the prior approval requirements of 49 U.S.C. 10903 for the abandonment of the line, and stated that the City has satisfied the requirements for a NITU. But because English had filed a notice of intent to file an OFA, it would have been inappropriate to issue a NITU at that time. Therefore, the Board held the City's request for issuance of a NITU in abeyance pending completion of the OFA process.

<sup>4</sup> Withdrawal, at 2-3.

<sup>5</sup> In a similar vein, we note that we did not permit English at the eleventh hour to join Riffin in purchasing the Remainder, see the decision served in this proceeding May 20, 2008, slip op. at 3-4.

make a timely offer to buy the Segment without English or to buy the entire line alone (and as a result, we have not found him financially qualified to do so), and the time for making any such offer has long since passed. See 49 CFR 1152.27(c)(1)(i)(B).

Thus, as a result of English's withdrawal and the consequences flowing from it as just discussed, we are declaring the OFA process in this proceeding terminated. Because the OFA process is being terminated, the Board's December 27, 2007 decision postponing abandonment authorization will be vacated to permit the abandonment authorization for the line to become effective upon service of this decision and notice. See 49 U.S.C. 10904; 49 CFR 1152.27(g)(2), (h)(7).

Trail Use. As indicated in the December 12 Decision, the City submitted a request for issuance of a NITU for the subject line under the Trails Act, in order to negotiate with KCSR for acquisition of the right-of-way for rail banking and interim recreational trail use. As previously indicated, the City satisfied at that time the requirements for a NITU. However, because a timely notice of intent to file an OFA had been filed, the Board could not issue a NITU. Because the OFA process is now being terminated, a 180-day period will now be authorized for KCSR and the City to negotiate an interim trail use/rail banking agreement.

This decision and notice will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Riffin's untimely June 6, 2008 filing is not accepted.
2. KCSR's request that the Board order the parties to close on the sale of the line under the OFA process is denied.
3. The decision served in this proceeding December 27, 2007, is vacated to terminate the OFA process and to permit the abandonment exemption in this proceeding to become effective.
4. The abandonment exemption will become effective on the service date of this decision and notice, subject to the conditions imposed in the December 12 Decision,<sup>6</sup> and subject to the NITU issued in this decision and notice.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

---

<sup>6</sup> These included employee protective conditions and an environmental condition.

7. If an agreement for interim trail use/rail banking is reached by December 13, 2008, interim trail use may be implemented. If no agreement is reached by that time, KCSR may fully abandon the line, provided the previously imposed conditions are met.

8. This decision and notice is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan  
Acting Secretary